

Atty Dkt. No.: CATH-001
U.S. Application Serial No. 10/803,468

REMARKS

In view of the following remarks, the Examiner is respectfully requested to withdraw the rejections and allow Claims 1-10, 22-27, 43-51 and 66, as well as newly added Claims 80-84, the only claims pending and currently under examination in this application.

Claim 1 has been amended to specify that removed fluid is not returned to the body, support for this amendment being found in the specification at page 7, lines 14 to 19. Claims 22, 43, and 66 have been amended to specify that the detector is located at an upstream location of the non-occlusive aspiration element, support for this amendment being found at least in Figure 9 and the supporting discussion at page 35, lines 27 ff. The same sections provide support for new Claim 80. New Claims 81 to 84 find support at page 24, lines 18 ff. As the above amendments introduce no new matter, their entry by the Examiner is respectfully requested.

Claims 1-7, 22, 26, 27, 43, 45, 49, 50, 52 and 66 have been rejected under 35 U.S.C. § 102(b) over Aigner (U.S. Patent No. 4,666,426).

With respect to Claims 1-7, all of Aigner's methods are directed to filtration methods in which fluid is removed, filtered and then returned to the body. As such, Aigner fails to teach a method in which fluid is removed from the body but not returned to the body. Accordingly, Aigner fails to anticipate Claims 1-7.

With respect to Claims 22, 26, 27, 43, 45, 49, 50, 52 and 66, the Examiner asserts that Aigner discloses a detector, and cites to item 4 of Figure 4. However, at Col. 7, lines 21, 22, it is stated that: "Numeral (4) denotes the elastic pillows for the control of the filling." The elastic pillows are previously described at Col. 7, lines 13-17 which read: "Inserted in hose connection (8) before and after hose pump (2),

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respectively, are bordered rubber diaphragms (3)..." As such, element 4 of Figure 4 does not refer to a detector, but instead to a flow regulator. As such, contrary to the Examiner's reading, element 4 of Figure 4 is not a detector.

Furthermore, even if element 4 were a detector, it is not located at an upstream location of a non-occlusive aspiration element.

Accordingly, Aigner fails to anticipate Claims 22, 26, 27, 43, 45, 49, 50, 52 and 66.

As such, Claims 1-7, 22, 26, 27, 43, 45, 49, 50, 52 and 66 are not anticipated under 35 U.S.C. § 102(b) over Aigner and this rejection may be withdrawn.

Next, Claims 8-10 and 23-25 were rejected under 35 U.S.C. § 103 (a) as obvious over Aigner in view of Movahed.

As reviewed above, with respect to method Claims 8-10, Aigner is deficient with respect to these method claims in that it fails to disclose or even suggest a method in which fluid is removed from the body and not returned to the body. Movahed, like Aigner, is directed to a filtration protocol in which fluid that is removed from the body is returned to the body. As such, Movahed also fails to teach or suggest a method in which fluid is removed from the body and not returned to the body.

Accordingly, because the combined teachings of Aigner in view of Movahed fail to teach or suggest a method in which fluid is removed from a body but not returned to the body, these combined teachings fail to make Claims 8-10 obvious.

Furthermore, with respect to Claims 23-25, as reviewed above Aigner fails to teach or suggest a detector located at an upstream location of a non-occlusive aspiration element. Since Movahed was only cited for its asserted disclosure of a

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feedback mechanism, Movahed fails to make up the deficiency of Aigner with respect to a non-occlusive aspiration element that includes a detector located at an upstream location thereof.

Therefore, Claims 8-10 and 23-25 are not obvious under 35 U.S.C. § 103 (a) over Aigner in view of Movahed and this rejection may be withdrawn.

Claim 49 was rejected under 35 U.S.C. § 103 (a) over Aigner in view of Alley. As reviewed above, Aigner is deficient in failing to teach or suggest a detector present at an upstream location of a non-occlusive aspiration element. Since Alley was cited solely for its asserted teaching of a retention element, Alley fails to make up the deficiency in Aigner and this rejection may be withdrawn.

Claim 44 was rejected under 35 U.S.C. § 103 (a) over Aigner in view of Stevens. As reviewed above, Aigner is deficient in failing to teach or suggest a detector present at an upstream location of a non-occlusive aspiration element. Since Stevens was cited solely for its asserted teaching of an expandable distal tip, Stevens fails to make up the deficiency in Aigner and this rejection may be withdrawn.

Claims 46, 48 and 51 were rejected under 35 U.S.C. § 103 (a) over Aigner in view of Nichols. As reviewed above, Aigner is deficient in failing to teach or suggest a detector present at an upstream location of a non-occlusive aspiration element. Since Nichols was cited solely for its asserted teaching of sealable and non-sealable distal fenestrae, Nichols fails to make up the deficiency in Aigner and this rejection may be withdrawn.

With respect to new Claims 80 to 84, these claims are patentable over the cited references for at least the reasons provided above.

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CONCLUSION

Applicant submits that all of the claims are in condition for allowance, which action is requested. If the Examiner finds that a telephone conference would expedite the prosecution of this application, please telephone the undersigned at the number provided.

The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extensions of time, or credit any overpayment to Deposit Account No. 50-0815, order number CATH-001.

Respectfully submitted,
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